

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CASE NO. 1:07CR15-9
vs.)	(Financial Litigation Unit)
)	
WILLIAM ALONZO SMITH,)	
)	
Defendant,)	
and)	
)	
PAYROLL PLUS CORPORATION,)	
)	
Garnishee.)	

ORDER OF CONTINUING GARNISHMENT

This matter is before the Court on the Government's Motion for Order of Continuing Garnishment (Doc. 344). Defendant has not filed any response or objection to the Motion.

On October 3, 2007, the Defendant was sentenced to ninety-seven months' incarceration following his conviction for Conspiracy to Manufacture and Possess with Intent to Distribute Methamphetamine in violation of 18 U.S.C. § 846. A written Judgment was filed on October 9, 2007 (Doc. 158). As part of the Judgment, Defendant was ordered to pay an assessment of \$100.00 and restitution in the amount of \$14,553.92. The Government reports that as of February 17, 2021 Defendant owes \$4,637.10.

On February 18, 2021, the Court entered a Writ of Continuing Garnishment (“Writ”) (Doc. 340) to the Garnishee, Payroll Plus Corporation.

The Government’s Motion indicates that a garnishment package containing the Writ and Instructions to Defendant informing him of his right to seek a hearing or claim certain exemptions (Doc. 341) was sent to Defendant by certified mail on February 25, 2021 (Doc. 342) and that a garnishment package containing the Writ and Instructions to Garnishee was sent to the Garnishee by certified mail on February 25, 2021 (Doc. 342).

The Motion further indicates that the Garnishee received the Writ on February 27, 2021.

The Garnishee’s Answer was filed on March 9, 2021 (Doc. No. 343) and appeared to state that at the time of the service of the Writ, the Garnishee had in its custody, control or possession property or funds owned by Defendant, including non-exempt, disposable earnings. The Garnishee’s Answer included a certificate of service indicating that the Garnishee mailed its Answer to Defendant on March 5, 2021. (Doc. 343 at 4).

In addition, the Motion states that Defendant received the Writ on March 12, 2021.

Pursuant to 28 U.S.C. § 3205 (c)(5), within 20 days after receipt of a garnishee’s answer, a judgment debtor or the United States may file a written objection to the answer and request a hearing.

Here, the record does not identify a specific date on which Defendant actually received the Garnishee's Answer. However, some courts have indicated that the debtor's objection deadline may be calculated as twenty-three days from the date the Garnishee's Answer was served. See United States v. Womack, No. 1:12-CR-176-1, 2014 WL 1757366, at *3 (M.D.N.C. Apr. 30, 2014), report and recommendation adopted, No. 1:12-CR-176-1, 2014 WL 2628539 (M.D.N.C. June 11, 2014); United States v. Jenkins, No. 3:05-CR-244, 2014 WL 202007, at *3 (E.D. Va. Jan. 17, 2014) (citing 28 U.S.C. § 3205(c)(5); Fed.R.Civ.P. 5(b)(2)(C); Fed.R.Crim.P. 45(c)) (debtor could have filed an objection to garnishee's answer and requested a hearing on the objection within twenty-three days of the date garnishee mailed a copy of its answer to debtor).

Twenty-three days from March 5 (the date the Garnishee served its Answer by mail) was March 28. Alternately, if the time for Defendant to object is calculated from March 12 (the date Defendant received the Writ), twenty days from that date is April 1. In either case, the deadline for Defendant to object has passed.

IT IS THEREFORE ORDERED THAT:

1. The Government's Motion for Order of Continuing Garnishment (Doc. 344) is **GRANTED** and an Order of Continuing Garnishment is hereby **ENTERED** in the amount of \$4,637.10, as computed through February 17, 2021. The Garnishee is directed to pay the Government

up to twenty-five percent of Defendant's disposable earnings which remain after all deductions required by law have been withheld, or the amount by which Defendant's disposable earnings for each week exceed 30 times the federal minimum wage, whichever is less, and to continue said payments until the debt is paid in full, until the Garnishee no longer has custody, possession or control of any property belonging to the Defendant, or until further Order of the Court. *See* 15 U.S.C. §1673(a).

2. Payments should be made payable to the United States Clerk of Court and mailed to:

Clerk of the United States District Court
401 West Trade Street
Charlotte, North Carolina 28202

Also, in order to ensure that each payment is credited properly, the following should be included on each check:

Court Number 1:07CR15-9.

3. The Garnishee is directed to advise the Government if Defendant's employment is terminated by the Garnishee or Defendant at any time before the debt is paid in full.

4. The Government is directed to submit this debt to the Treasury for inclusion in the Treasury Offset Program.

Signed: May 7, 2021

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

